

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
vs.	)	CASE NO. <u>1:09cr177</u>
GREGORY EUGENE McGHEE	)	Honorable Anthony J. Trenga
	)	Sentencing Date: August 28, 2009

POSITION OF DEFENDANT WITH RESPECT TO SENTENCING FACTORS

COMES NOW the Defendant, GREGORY EUGENE McGHEE, by counsel, and pursuant to section 6A1 of the Sentencing Guidelines and Policy Statements respectfully states that the Defendant has reviewed the Presentence Report with counsel, and that he has but one objection to the factors or findings of the Presentence Report filed herein, as follows:

Worksheet A: Role in the Offense. We request a two level reduction for being a minor participant in this conspiracy. Paragraphs 11, 25 and 26 describe this defendant as having been **recruited** by another person as a **courier**, being **directed** to obtain drugs, being **managed and supervised** by another while serving as a **courier**. Moreover, the language of application note 3. (A) to USSG section 3B1.2 (Mitigating Role) appears custom designed to describe Mr. McGhee's situation in this conspiracy. He transported drugs and was held accountable solely for the drug quantity with which he was seized. Hence, we believe this role reduction would apply in Mr. McGhee's case.

### **18 U.S.C. 3553(a) FACTORS**

We suggest that the low end of the Guidelines, the mandatory minimums, will more than serve the purposes of the section 3553(a) factors of (1) the nature and circumstances of the offense and the history and characteristics of the defendant, and (2)(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; C) to protect the public from further crimes of the defendant, and (D) to meet the needs of the defendant.

### **STATUTORY AND POLICY DISADVANTAGES**

This defendant suffers from two significant statutory and policy disadvantages. First, the statutory mandatory minimum sentence of ten years (120 months) pursuant to 21 U.S.C. 841 serves to create a restricted Guideline range of 120 months as to count one. His low end Guideline result as presently calculated without a role in the offense reduction would otherwise be eighty-seven (87) months, a significant thirty-three (33) month difference.

The firearm count further subjects Gregory McGhee to another mandatory minimum sentence of 60 months.

This is too long a sentence to teach this man his lesson. However, the Court is bound by the statutory mandatory minimums in both of these counts.

WHEREFORE the Defendant, GREGORY EUGENE McGHEE, by counsel, requests that he be sentenced initially at the mandatory minimums.

FURTHER, the defendant requests the Court to recommend him for participation in the Bureau of Prisons intensive Residential Drug and Alcohol Program and further to recommend that he be designated to a facility near to Washington D.C. which has the RDAP program, such as the

Camp at F.P.C. Cumberland, Maryland or F.C.I. Morgantown, West Virginia, so as to be near family and friends.

Respectfully submitted,

GREGORY EUGENE McGHEE  
By Counsel

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on August, 19, 2009 I electronically filed the foregoing Position Of Defendant With Respect To Sentencing Factors with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing (NEF) to the following person:

Daniel Grooms, Esquire,  
Assistant United States Attorney  
2100 Jamieson Avenue  
Alexandria, Virginia 22314

A copy will be mailed to Mr. William C. Byerley United States Probation Officer, at 10500 Battleview Parkway, Manassas, Virginia 20109, on August 19, 2009.

/s/

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